

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Teresa Mae Bowen,

Plaintiff,

v.

Case No. 13-14974

Commissioner of Social Security,

Sean F. Cox

United States District Court Judge

Defendant.

ORDER ADOPTING
REPORT AND RECOMMENDATION

Teresa Mae Bowen (“Plaintiff”) brought this action challenging the Commissioner’s decision denying her application for Disability Insurance Benefits (“DIB”). The matter was referred to Magistrate Judge R. Steven Whalen for determination of all non-dispositive motions pursuant to 28 U.S.C. § 636(b)(1) and Report and Recommendation pursuant to § 636(b)(1)(B) and (C).

Thereafter, the parties filed cross-motions for summary judgment. Plaintiff’s motion and supporting brief consisted of eight pages total. Plaintiff did not file a brief in response to the Commissioner’s twenty-four page motion and supporting brief. In Plaintiff’s motion and brief, she argued that: 1) the ALJ’s decision is not supported by substantial evidence; and 2) the ALJ’s credibility determination lacks sufficient facts for the conclusion that Plaintiff’s testimony was not truthful. Although her prayer for relief asked that the case be “[r]emanded for further development of the record as Plaintiff was unrepresented at her hearing,” Plaintiff’s motion and supporting brief do not explain what issue or issues she believes require further development, or

why that is the case.

In a Report and Recommendation (“R&R”) issued on September 30, 2014, Magistrate Judge Whalen recommends that this Court: 1) Deny Plaintiff’s Motion for Summary Judgment; and 2) Grant the Commissioner’s Motion for Summary Judgment, affirming the findings and conclusions of the Commissioner.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

Plaintiff filed timely objections on October 13, 2014. (Docket Entry No. 12). In her “objections” to the R&R, Plaintiff asserts – for the first time – that the ALJ erred in not seeking certain further information from medical professionals. Those are arguments that her counsel could have made in her motion but did not do so. The magistrate judge did not “err” by failing to address arguments Plaintiff failed to make during the briefing of the cross-motions for summary judgment.

Plaintiff also asserts that the magistrate judge’s “findings that the claimant failed to seek more aggressive treatment are inconclusive” and Plaintiff asserts that her failure to seek treatment was related to her financial hardship. (Pl.’s Objs. at 3). Although not raised in Plaintiff’s motion and brief, this Court concludes that the magistrate judge nevertheless properly considered whether Plaintiff’s financial problems impacted her failure to seek treatment:

The ALJ also found that Plaintiff’s claims were undermined by her failure to seek more aggressive treatment (Tr. 27). I note that during the period Plaintiff

experienced acute financial and housing problems, she nonetheless had access to quality health care (Tr. 220, 228, 236, 238, 245, 253).

(R&R at 15). The Court therefore finds this objection also lacks merit.

Accordingly, IT IS ORDERED that the Court hereby ADOPTS the September 30, 2014 R&R.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED, that Defendant's Motion for Summary Judgment is GRANTED, and that the ALJ's decision is AFFIRMED.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: November 12, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 12, 2014, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager